

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
The Amended Citizens Utility Board Petition)	
for Expedited Permanent Waiver of)	NSD File No. L-01-161
47 C.F.R. § 52.19(c)(3)(ii))	CC Docket No. 96-98
)	
)	
)	

ORDER

Adopted: March 8, 2002

Released: March 11, 2002

By the Common Carrier Bureau:

I. INTRODUCTION

1. On October 4, 2001, the Illinois Citizens Utility Board (CUB) petitioned the Federal Communications Commission (Commission) for a permanent waiver of the ten-digit dialing rule set forth in section 52.19(c)(3)(ii) of the Commission's rules.¹ Specifically, CUB asks the Commission not to require ten-digit dialing in the Chicago-based 847 numbering plan area (NPA), which was recently overlaid by the 224 NPA. We conclude that the arguments set forth by CUB fail to show good cause for permanent waiver of the ten-digit dialing mandate, and that a permanent waiver of the ten-digit dialing rule would undermine the Commission's policy of promoting competition in the telecommunications marketplace.

II. BACKGROUND

2. Section 251(e)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (1996 Act), gives the Commission exclusive jurisdiction over those portions of numbering administration pertaining to the United States, and allows the Commission to delegate to state commissions or other entities "all or any portion of such jurisdiction."² In the *Local Competition Second Report and Order*,³ the Commission recognized that "states are uniquely situated to

¹ *Amended Citizens Utility Board Petition for Expedited Permanent Waiver of 47 C.F.R. § 52.19(c)(3)(ii)*, filed October 4, 2001 (CUB Petition). See also 47 C.F.R. § 52.19(c)(3)(ii).

² 47 U.S.C. § 251(e)(1).

³ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) (*Local Competition Second Report and Order*), vacated in part sub nom. *People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), rev'd, *AT&T Corp. v. Iowa Util. Bd.*, 119 S.Ct. 721 (1999), reconsideration granted in part and denied in part, 14 FCC Rcd 17964 (1999).

determine what type of area code relief is best suited to local circumstances."⁴ Section 52.19 of the Commission's rules delegates authority to state commissions to implement area code relief within their respective states subject to the Commission's rules.⁵ If a state commission decides to implement an area code overlay, section 52.19(c)(3)(ii) of the Commission's rules requires ten-digit dialing to be implemented within and between all area codes in the geographic area covered by the overlay area code.⁶

3. *Temporary Waiver of Ten-Digit Dialing in Illinois.* On March 2, 2000, the Common Carrier Bureau (Bureau) granted the Illinois Commerce Commission's (Illinois Commission) request for a temporary waiver of the mandatory ten-digit dialing rule in the Chicago metropolitan area until the last of four area code overlays was activated, but no later than April 1, 2001.⁷ The Bureau concluded that the Illinois Commission required more time to conduct an efficient, one-time customer education campaign.⁸ Subsequently, pursuant to a second request by the Illinois Commission, the Bureau granted an extension of that deadline until January 7, 2002.⁹ Although the Bureau did not conclude that carriers needed additional time to update their networks, it did determine that customers still needed to be educated about dialing patterns.¹⁰

4. *Permanent Waiver of Ten-Digit Dialing.* The Bureau has previously denied two petitions for permanent waiver of the ten-digit dialing rule.¹¹ In the *New York Waiver Order*, the Bureau rejected arguments by the New York State Department of Public Service (New York Commission) that: (1) the large demand for numbers mitigates any of the anti-competitive effects perceived from the overlay and that ten-digit dialing would not improve competition; (2) local number portability and enforcement of the central office code guidelines help to prevent the potentially anti-competitive effect of a dialing disparity; (3) thousands-block number pooling allows incumbent local exchange carriers (LECs) and competitive LECs to have equal access to numbers; (4) the low number of rate centers in Manhattan allows all competitors to access central office codes in all rate centers within the existing area code; and (5) ten-digit dialing would unjustifiably inconvenience callers in the New York City area.¹²

⁴ *Local Competition Second Report and Order*, 11 FCC Rcd at 19517.

⁵ See 47 C.F.R. § 52.19.

⁶ See 47 C.F.R. § 52.19(c)(3)(ii).

⁷ *In the Matter of Illinois Commerce Commission Petition for Expedited Temporary Waiver of 47 CFR §52.19(c)(3)(ii)*, Order, 15 FCC Rcd 4632, 4633 (rel. March 2, 2000).

⁸ *Id.* at 4639-4640.

⁹ *Expedited Petition of the Illinois Commerce Commission to Reset the Mandatory Expiration Date of Its Temporary Waiver of 47 CFR Section 52.19(c)(3)(ii) to Reflect the Exhaust of the 847 NPA, the First of Five Area Codes in the Chicago Metropolitan Area to Reach Exhaust*, Order, 16 FCC Rcd 7511 (2001) (*Waiver Letter*).

¹⁰ *Id.* at 7512-7513.

¹¹ See *New York Department of Public Service Petition for Expedited Waiver of 47 C.F.R. 52.19(c)(3)(ii)*, Order, 13 FCC Rcd 13491 (1998) (granting a temporary waiver of the ten-digit dialing rule) (*New York Waiver Order*); see also *Pennsylvania Public Utility Commission Petition for Expedited Waiver of 47 C.F.R. §52.19 for Area Code 412 Relief*, Memorandum Opinion and Order, 12 FCC Rcd 3783 (1997) (granting a temporary waiver of ten-digit dialing for the purpose of allowing more time for network modifications and customer education) (*Pennsylvania Waiver Order*).

¹² See *New York Waiver Order*, 13 FCC Rcd at 13494-13498 (citing *New York Petition for Expedited Waiver of 47 C.F.R. Section 52.19(c)(3)(ii)*, at 2-3, 6-7, filed January 8, 1998).

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5. The Commission also denied the New York Commission's application for review of the *New York Waiver Order*.¹³ The Commission agreed with the Bureau's conclusion that, even with the availability of local number portability, a dialing disparity would continue to exist for new customers and for existing customers' second lines.¹⁴ The United States Court of Appeals for the Second Circuit (Second Circuit Court) upheld the Commission's decision, denying the New York Commission's petition challenging the Commission's authority to adopt and enforce section 52.19(c)(3)(ii).¹⁵

III. DISCUSSION

6. *Waiver Standard.* The Commission may waive its rules "for good cause shown"; *i.e.*, if special circumstances justify a deviation from the rule and that deviation will serve the public interest.¹⁶ Examples of special circumstances that the Commission may consider include the hardship imposed by enforcement of the rule, equity, or more effective implementation of the overall policy on an individual basis.¹⁷ A grant of a waiver must be based on reasonable standards that are predictable, practical and not prone to discriminatory application.¹⁸

7. The Commission adopted the ten-digit dialing requirement primarily to ensure that competition is not harmed as a result of a dialing disparity.¹⁹ Without ten-digit dialing, telephone users in the old area code would be able to dial seven digits for most local calls while users assigned numbers in the all-services overlay would be required to dial ten digits for most local calls.²⁰ Thus, since new entrants are more likely to obtain numbers from the new overlay code, this dialing disparity may interfere with competition by discouraging consumers from choosing providers with available numbers only in the overlay code.²¹

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¹³ See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Order on Reconsideration of the Second Report and Order and Memorandum Opinion and Order, 14 FCC Rcd 17964 (1999) (*Third Reconsideration, Local Competition Second Report and Order*).

¹⁴ *Third Reconsideration, Local Competition Second Report and Order*, 14 FCC Rcd at 17993 (citing *Pennsylvania Waiver Order*, 12 FCC Rcd at 3793).

¹⁵ See *People of the State of New York & Public Service Commission of the State of New York v. Federal Communications Commission*, 267 F.3d 91, 94 (2nd Cir. 2001) (*New York Commission v. FCC*).

¹⁶ See 47 C.F.R. § 1.3; see also *New York Waiver Order*, 13 FCC Rcd at 13493 (citing *Northeast Cellular Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*)).

¹⁷ *Pennsylvania Waiver Order*, 12 FCC Rcd at 3791 (citing *WAIT Radio*, 418 F.2d at 1159).

¹⁸ *Id.* (citing *Northeast Cellular*, 897 F.2d at 1166).

¹⁹ See *Local Competition Second Report and Order*, 11 FCC Rcd at 19518-19519.

²⁰ *Id.*

²¹ *Id.* Furthermore, in the *Numbering Resource Optimization Notice*, the Commission recognized the numbering resource optimization benefits of mandatory ten-digit dialing. See *Numbering Resource Optimization*, Notice of Proposed Rulemaking, 14 FCC Rcd 10322, 10376-78 (2000) (*Numbering Resource Optimization Notice*). For example, the Commission recognized that ten-digit dialing may increase the number of available central office codes within an area code because codes starting with a zero or a one could be made available to providers. *Id.* at 10376-77.

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8. *CUB Petition.* In its petition, CUB initially argues that the Commission may not preempt state jurisdiction over local calling because section 251(e) of the 1996 Act does not provide the clear congressional intent required for agency preemption. We disagree; the Commission has previously established that it has plenary jurisdiction over numbering administration in the United States, including some aspects of intrastate communications.²² The Second Circuit Court agrees,²³ and has determined that the Commission properly interprets “numbering administration” to encompass local dialing patterns and the uniform numbering system.²⁴

9. CUB further argues that local number portability eliminates anti-competitive concerns with area code overlays because customers can port their 847 number to a new service provider.²⁵ The Commission previously determined that local number portability does not “obviate the need for mandatory ten-digit dialing”²⁶ because it does not eliminate the dialing disparity. Moreover, as AT&T Wireless points out, not all service providers will become LNP-capable, and customers that want additional telephone numbers for uses such as second telephone lines would be limited to numbers in the overlay area code.²⁷ We therefore do not find that the existence of local number portability is a special circumstance that justifies a waiver of the ten-digit dialing rule.²⁸

10. CUB also claims that the 847 area code still has a sufficient supply of numbers available for wireless providers and that, once wireless carriers become LNP-capable by November 24, 2002, as required, the dialing disparity will be eliminated.²⁹ In its Reply Comments, CUB argues that, to date, new service providers have only received numbers in the 847 NPA.³⁰ One commenter in support of CUB insists that there is a significant amount of unused numbers in the 847 NPA, with only a 50% utilization rate for the past three years.³¹

11. Despite the availability of numbers in the 847 NPA, the Illinois Commission determined that area code relief was necessary to ensure that all service providers have access to the numbering resources they need to serve their customers and to provide service to new customers. Because of the

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²² See *Third Reconsideration, Local Competition Second Report and Order*, 14 FCC Rcd at 17990-91 (finding that section 2(b) of the 1996 Act did not interfere with the Commission’s exclusive jurisdiction over numbering administration).

²³ See *New York Commission v. FCC*, 267 F.3d at 103; see also AT&T Wireless Comments at 4; Verizon Comments at 4; VoiceStream Reply Comments at 1-5; WorldCom Reply Comments at 2.

²⁴ *New York Commission v. FCC*, 267 F.3d at 103.

²⁵ CUB Petition at 11-12.

²⁶ See *Third Reconsideration, Local Competition Second Report and Order*, 14 FCC Rcd at 17994; see also CTIA Comments at 3; Verizon Wireless Comments at 5.

²⁷ AT&T Wireless Comments at 5.

²⁸ See *New York Waiver Order*, 13 FCC Rcd at 13496.

²⁹ CUB Petition at 12.

³⁰ CUB Reply Comments at 2.

³¹ Comments of Illinois State Representative Karen May at 1.

way that numbers are distributed,³² it is the availability of CO codes or thousands-blocks, not individual numbers, that determines the need for area code relief. Although future wireless participation in pooling may result in more available numbering resources, the implementation of a new overlay area code, according to the Illinois Commission, is necessary at the present time. Further, we disagree that any dialing disparity will be eliminated by wireless carrier participation in number portability and pooling, since all carriers using numbers from the overlay area code would be subject to the same dialing requirements.

12. Finally, CUB argues that the burdens of ten-digit dialing outweigh its minimal benefits, and contends that ten-digit dialing confuses consumers, such as children and the elderly, and impacts fax machines, Internet connections and local businesses.³³ Although some confusion may occur, we find that, without ten-digit dialing, the dialing disparity between customers in the existing and overlay area codes would cause as much if not more confusion.³⁴ Given the education already provided to customers located in the 847 and 224 NPAs, we are confident that any confusion will be minimal and short-lived. We therefore conclude that CUB has not shown good cause for granting a permanent waiver of the ten-digit dialing requirement, nor has CUB demonstrated that a permanent waiver would be in the public interest.

13. IT IS THEREFORE ORDERED, pursuant to sections 1.3 and 52.19 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that the Amended Citizens Utility Board Petition for Expedited Permanent Waiver of 47 C.F.R. § 52.19(c)(3)(ii) is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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³² See *Numbering Resource Optimization Notice*, 14 FCC Rcd at 10331.

³³ CUB Petition at 15. One commenter agrees that the Bureau should factor in the costs on consumers. See *People of the State of Illinois Reply Comments* at 4-5.

³⁴ See *New York Waiver Order*, 13 FCC Rcd at 13498.